MONTANA LEGISLATIVE HISTORY

Chapter 434 19 95

Bill H 41 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Jan 03	✓ C	Hearing Date(s)	Mar 06	✓ C
	Feb 11	✓ C			C
		C			C
		C			C
Date Out	Feb 14	✓ C		Mar 07	✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

1/20	2ND READING CONCURRED	42	8
1/21	3RD READING CONCURRED	34	12
	RETURNED TO HOUSE		
1/24	SIGNED BY SPEAKER		
1/24	SIGNED BY PRESIDENT		
1/26	TRANSMITTED TO GOVERNOR		
1/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 12		
	EFFECTIVE DATE: 01/27/95		

HB 41 INTRODUCED BY L. SMITH

PROVIDE A PROCEDURE BY WHICH MEDICATION MAY BE INVOLUNTARILY ADMINISTERED TO A PATIENT AT A MENTAL HEALTH FACILITY

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

12/22	INTRODUCED		
1/02	FIRST READING		
1/02	REFERRED TO JUDICIARY		
1/03	HEARING		
1/04	FISCAL NOTE REQUESTED		
1/10	FISCAL NOTE RECEIVED		
1/11	FISCAL NOTE PRINTED		
2/15	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/17	2ND READING PASSED	86	13
2/18	3RD READING PASSED	91	8
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO JUDICIARY		
3/06	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/10	2ND READING CONCURRED	43	0
3/11	3RD READING CONCURRED	36	3
	RETURNED TO HOUSE WITH AMENDMENTS		
4/04	2ND READING AMENDMENTS CONCURRED	90	9
4/05	3RD READING AMENDMENTS CONCURRED	85	13
4/07	SIGNED BY SPEAKER		
4/08	SIGNED BY PRESIDENT		
4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 434		
	EFFECTIVE DATE: 10/01/95		

HB 42 INTRODUCED BY REHBEIN

PROVIDE A PENALTY FOR INSTALLING A FACILITY OR STRUCTURE ON STATE LAND WITHOUT PERMISSION OF DEPARTMENT OF STATE LANDS

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

12/22	INTRODUCED		
12/28	FISCAL NOTE REQUESTED		
1/02	FISCAL NOTE RECEIVED		
1/02	FIRST READING		
1/02	REFERRED TO NATURAL RESOURCES		
1/03	FISCAL NOTE PRINTED		
1/04	HEARING		
1/19	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/23	2ND READING DO PASS MOTION FAILED	47	52

HOUSE BILL NO. 41

INTRODUCED BY L. SMITH

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A DETERMINATION OF INCAPACITY IN AN INVOLUNTARY COMMITMENT PROCEEDING; REQUIRING THE APPOINTMENT OF A TREATMENT GUARDIAN; ENUMERATING THE POWERS AND DUTIES OF A TREATMENT GUARDIAN; AMENDING SECTIONS 41-5-523, 53-21-102, 53-21-106, 53-21-120, 53-21-121, 53-21-123, 53-21-126, 53-21-127, AND 53-21-128, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-21-102, MCA, is amended to read:

"53-21-102. (Temporary) Definitions. As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Court" means any district court of the state of Montana.

(3) "Department" means the department of corrections and human services provided for in Title 2, chapter 15, part 23.

(4) "Emergency situation" means a situation in which ~~any~~ a person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Friend of respondent" means ~~any~~ a person willing and able to assist a mentally ill person, a person alleged to be mentally ill, a seriously mentally ill person, or a person alleged to be seriously mentally ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin~~,~~; the person's conservator or legal guardian, if any~~,~~; a representative of a charitable or religious organization~~,~~; or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its designation of the friend of respondent.

(6) "Mental disorder" means any organic, mental, or emotional impairment ~~which~~ that has substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

(a) addiction to drugs or alcohol; or

(b) drug or alcohol intoxication.

(7) "Mental health facility" or "facility" means a public hospital or a licensed private hospital ~~which~~ that is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or ~~any~~ a mental health clinic or treatment center approved by the department. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(8) "Mentally ill" means suffering from a mental disorder ~~which~~ that has not resulted in self-inflicted injury or injury to others or the imminent threat of injury but ~~which~~ that:

(a) has resulted in behavior that creates serious difficulty in protecting the person's life or health even with the available assistance of family, friends, or others;

(b) is treatable, with a reasonable prospect of success and consistent with the least restrictive course of treatment as provided in 53-21-127~~(3)~~, at or through the facility to which the person is to be committed;

(c) has deprived the person of the capacity to make an informed decision concerning treatment;

(d) has resulted in the person's refusing or being unable to consent to voluntary admission for treatment; and

(e) poses a significant risk of the person's becoming seriously mentally ill or will, if untreated, predictably result in further serious deterioration in the mental condition of the person. Predictability may be established by the patient's medical history.

(9) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(10) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(11) "Peace officer" means ~~any~~ a sheriff, deputy sheriff, marshal, ~~policeman~~ police officer, or other peace officer.

(12) "Professional person" means:

(a) a medical doctor; or

(b) a person who has been certified, as provided for in 53-21-106, by the department.

(13) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(14) "Respondent" means a person alleged in a petition filed pursuant to this part to be mentally ill or seriously mentally ill.

(15) "Seriously mentally ill" means suffering from a mental disorder ~~which~~ that has resulted in self-inflicted injury or injury to others or the imminent threat of injury or ~~which~~ that has deprived the person afflicted of the ability to protect the person's life or health. For this purpose, injury means physical injury. A person may not be involuntarily committed to a mental health facility or detained for evaluation and treatment because the person is an epileptic, ~~or is~~ mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes the person to be seriously mentally ill within the meaning of this part.

(16) "State hospital" means the Montana state hospital.

(17) "Treatment guardian" means a competent person; a suitable institution, association, or nonprofit corporation; or a member of a suitable institution, association, or nonprofit corporation who makes decisions on behalf of an incapacitated person as to medical and psychiatric treatment. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

53-21-102. (Effective July 1, 1997) Definitions. As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Court" means any district court of the state of Montana.

(3) "Department" means the department of corrections and human services provided for in Title 2, chapter 15, part 23.

(4) "Emergency situation" means a situation in which ~~any~~ a person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Friend of respondent" means ~~any~~ a person willing and able to assist a seriously mentally ill person or person alleged to be seriously mentally ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin~~,~~ the person's conservator or legal guardian, if any~~,~~ representatives of a charitable or religious organization~~,~~ or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one

person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its designation of the friend of respondent.

(6) "Mental disorder" means any organic, mental, or emotional impairment ~~which~~ that has substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

(a) addiction to drugs or alcohol; or

(b) drug or alcohol intoxication.

(7) "Mental health facility" or "facility" means a public hospital or a licensed private hospital ~~which~~ that is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or ~~any~~ a mental health clinic or treatment center approved by the department. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(8) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(9) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(10) "Peace officer" means ~~any~~ a sheriff, deputy sheriff, marshal, ~~policeman~~ police officer, or other peace officer.

(11) "Professional person" means:

(a) a medical doctor; or

(b) a person who has been certified, as provided for in 53-21-106, by the department.

(12) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously mentally ill.

(14) "Seriously mentally ill" means suffering from a mental disorder ~~which~~ that has resulted in self-inflicted injury or injury to others or the imminent threat of injury or ~~which~~ that has deprived the person afflicted of the ability to protect the person's life or health. For this purpose, injury means physical injury. A person may not be involuntarily committed to a mental health facility or detained for evaluation and treatment because the person is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes the person to be seriously mentally ill within the meaning of

this part.

(15) "State hospital" means the Montana state hospital.

(16) "Treatment guardian" means a competent person; a suitable institution, association, or nonprofit corporation; or a member of a suitable institution, association, or nonprofit corporation who makes decisions on behalf of an incapacitated person as to medical and psychiatric treatment."

Section 2. Section 53-21-106, MCA, is amended to read:

"**53-21-106. (Temporary) Certification of professional persons.** (1) The department shall certify professional persons, as defined in 53-21-102, for the purpose of this part.

(2) The department, with reference to recognized national standards in the field of mental health, shall adopt standards and rules governing the certification of professional persons.

(3) The rules for certification must address but are not limited to:

(a) the type of education that an individual has received, including degrees;

(b) the type of experience of or training received by the individual;

(c) continuing education, training, instruction, and work experience necessary to maintain certification;

(d) an examination instrument to be used to determine an individual's proficiency and understanding of mental health laws, diagnosis, and treatment procedures;

(e) the procedure for categorical certification qualifying the level of professional authority and responsibility of an individual; and

(f) specific procedures for certification, recertification, and revocation of certification. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

53-21-106. (Effective July 1, 1997) Certification of professional persons. (1) The department shall certify professional persons ~~as defined in 53-21-102(10)(b)~~ for the purpose of this part.

(2) The department, with reference to recognized national standards in the field of mental health, shall adopt standards and rules governing the certification of professional persons as defined in 53-21-102.

(3) The rules for certification must address but are not limited to:

(a) the type of education that an individual has received, including degrees;

(b) the type of experience of or training received by the individual;

(c) continuing education, training, instruction, and work experience necessary to maintain

certification;

(d) an examination instrument to be used to determine an individual's proficiency and understanding of mental health laws, diagnosis, and treatment procedures;

(e) the procedure for categorical certification qualifying the level of professional authority and responsibility of an individual; and

(f) specific procedures for certification, recertification, and revocation of certification."

Section 3. Section 53-21-120, MCA, is amended to read:

"**53-21-120. (Temporary) Detention to be in least restrictive environment -- preference for mental health facility -- court relief -- prehearing detention of mentally ill person prohibited.** (1) A person detained pursuant to this part must be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public~~; in this respect~~. With regard to this detention, prevention of significant injury to property may be considered.

(2) Whenever possible, a person detained pursuant to this part must be detained in a mental health facility and in the county of residence. If the person detained demands a jury trial and the trial cannot be held within 7 days, the individual may be sent to the state hospital until the time of trial if arrangements can be made to return ~~him~~ the person to trial. The trial must be held within 30 days. The county of residence shall pay the cost of travel and professional services associated with the trial. A person may not be detained in ~~any~~ a hospital or other medical facility that is not a mental health facility unless the hospital or facility has agreed in writing to admit the person.

(3) A person may not be detained pursuant to this part in a jail or other correctional facility.

(4) A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility where the person is being ~~utilized to detain~~ detained.

(5) Detention may not be ordered under this part for a person concerning whom a petition has been filed under 53-21-121(1)~~(b)~~(a)(ii).

(6) A person may not be involuntarily committed to a mental health facility or detained for evaluation and treatment because ~~he~~ the person is an epileptic, ~~or is~~ mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes ~~him~~ the person to be seriously mentally ill within the meaning of this part. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

53-21-120. (Effective July 1, 1997) Detention to be in least restrictive environment -- preference for mental health facility -- court relief -- prehearing detention of mentally ill person prohibited. (1) A person detained pursuant to this part must be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public~~; in this respect~~. With regard to this detention, prevention of significant injury to property may be considered.

(2) Whenever possible, a person detained pursuant to this part must be detained in a mental health facility and in the county of residence. If the person detained demands a jury trial and the trial cannot be held within 7 days, the ~~individual~~ person may be sent to the state hospital until the time of trial if arrangements can be made to return ~~him~~ the person to trial. The trial must be held within 30 days. The county of residence shall pay the cost of travel and professional services associated with the trial. A person may not be detained in ~~any~~ a hospital or other medical facility that is not a mental health facility unless the hospital or facility has agreed in writing to admit the person.

(3) A person may not be detained pursuant to this part in a jail or other correctional facility.

(4) A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility where the person is being ~~utilized to detain~~ detained."

Section 4. Section 53-21-121, MCA, is amended to read:

"**53-21-121. (Temporary) Petition for commitment -- contents of -- notice of.** (1) The county attorney, upon the written request of any person having direct knowledge of the facts, may file a petition with the court:

(a) alleging that there is a person within the county:

(i) who is seriously mentally ill and requesting that the person be committed to a mental health facility for a period of no more than 3 months; or

~~(b)~~(ii) ~~alleging that there is a person within the county~~ who is mentally ill and requesting that the person be committed to a mental health facility for a period of no more than 30 days; and

(b) alleging that the person is an incapacitated person as defined in 72-5-101.

(2) The petition ~~shall~~ must contain:

(a) the name and address of the person requesting the petition and ~~his~~ the person's interest in the case;

(b) the name of the respondent and, if known, the address, age, sex, marital status, and occupation of the respondent;

(c) the purported facts supporting the allegation of mental illness and incapacity;

(d) the name and address of every person known or believed to be legally responsible for the care, support, and maintenance of the ~~person for whom evaluation is sought~~ respondent;

(e) the name and address of the ~~person's~~ respondent's next of kin to the extent known to the county attorney and the person requesting the petition;

(f) the name and address of any person ~~whom~~ who the county attorney believes might be willing and able to be appointed as friend of respondent;

(g) the name and address of a potential treatment guardian;

(h) the name, address, and telephone number of the attorney, if any, who has most recently represented the ~~person for whom evaluation is sought; if~~ respondent. If there is no attorney, there ~~shall~~ must be a statement as to whether to the best knowledge of the person requesting the petition the ~~person for whom evaluation is sought~~ respondent is indigent and therefore unable to afford the services of an attorney~~; and~~.

~~(h)~~(i) a statement of the rights of the respondent ~~which shall~~ that must be in conspicuous print and identified by a suitable heading.

(3) Notice of the petition ~~shall~~ must be hand-delivered to the respondent and to ~~his~~ the respondent's counsel on or before the initial appearance of the respondent before the judge or justice of the peace. Notice of the petition and the order setting the date and time of the hearing and the names of the respondent's counsel, professional person, ~~and~~ friend of respondent ~~shall~~, and proposed treatment guardian must be hand-delivered or mailed to the person or persons who are legally responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition, and any other person identified by the county attorney as a possible friend of respondent other than the one named as the friend of respondent. The notice may provide, other than as to the respondent and ~~his~~ the respondent's counsel, that no further notice will be given unless a written request is filed with the clerk of court. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

53-21-121. (Effective July 1, 1997) Petition for commitment -- contents of -- notice of. (1) The county attorney, upon the written request of any person, may file a petition with the court:

(a) alleging that there is a person within the county who is seriously mentally ill and requesting that

the person be committed to a mental health facility for a period of no more than 3 months; and

(b) alleging that the person is an incapacitated person as defined in 72-5-101.

(2) The petition ~~shall~~ must contain:

(a) the name and address of the person requesting the petition and ~~his~~ the person's interest in the case;

(b) the name of the respondent and, if known, the address, age, sex, marital status, and occupation of the respondent;

(c) the purported facts supporting the allegation of mental illness and incapacity;

(d) the name and address of every person known or believed to be legally responsible for the care, support, and maintenance of the ~~person for whom evaluation is sought~~ respondent;

(e) the name and address of the ~~person's~~ respondent's next of kin to the extent known to the county attorney and the person requesting the petition;

(f) the name and address of any person ~~whom~~ who the county attorney believes might be willing and able to be appointed as a friend of respondent;

(g) the name and address of a potential treatment guardian;

(h) the name, address, and telephone number of the attorney, if any, who has most recently represented the ~~person for whom evaluation is sought; if~~ respondent. If there is no attorney, there ~~shall~~ must be a statement as to whether to the best knowledge of the person requesting the petition the ~~person for whom evaluation is sought~~ respondent is indigent and therefore unable to afford the services of an attorney~~; and~~.

~~(h)~~(i) a statement of the rights of the respondent ~~which shall~~ that must be in conspicuous print and identified by a suitable heading.

(3) Notice of the petition ~~shall~~ must be hand-delivered to the respondent and to ~~his~~ the respondent's counsel on or before the initial appearance of the respondent before the judge or justice of the peace. Notice of the petition and the order setting the date and time of the hearing and the names of the respondent's counsel, professional person, ~~and~~ friend of respondent ~~shall~~, and proposed treatment guardian must be hand-delivered or mailed to the person or persons who are legally responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition, and any other person identified by the county attorney as a possible friend of respondent other than the one named as the friend of respondent. The notice may provide, other than as to the respondent and ~~his~~ the respondent's counsel,

that no further notice will be given unless a written request is filed with the clerk of court."

Section 5. Section 53-21-123, MCA, is amended to read:

"**53-21-123. (Temporary) Examination of respondent following initial hearing -- recommendation of professional person.** (1) Following the initial hearing, whether before a judge or justice of the peace, the respondent ~~shall~~ must be examined by ~~the~~ a professional person without unreasonable delay. In the case of a petition alleging incapacity, the professional person must be a physician or psychologist. The examination may not exceed a period of 4 hours. The professional person shall immediately notify the county attorney of ~~his~~ the findings in person or by phone and shall make a written report of ~~his~~ the examination to the court~~, with~~ and send copies to the respondent's attorney and the county attorney.

(2) The following action ~~shall~~ must be taken based on the professional person's findings:

(a) If ~~he~~ the professional person recommends dismissal, ~~he~~ the professional person shall additionally notify counsel and the respondent, if ~~he has been~~ detained, ~~shall~~ must be released and the petition dismissed. However, the county attorney may, upon good cause shown, request the court to order ~~an~~ no more than one additional~~, but no more than one,~~ examination by a different professional person for a period of no more than 4 hours.

(b) If ~~he~~ the professional person finds that commitment proceedings should continue, the hearing ~~shall~~ must be held as scheduled.

(3) The court may not order further evaluation pending the hearing unless sound medical reasons require additional time for a complete evaluation. ~~Such~~ The reasons ~~shall~~ must be set forth in the order, along with the amount of additional time needed. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

53-21-123. (Effective July 1, 1997) Examination of respondent following initial hearing -- recommendation of professional person. (1) Following the initial hearing, whether before a judge or justice of the peace, the respondent ~~shall~~ must be examined by ~~the~~ a professional person without unreasonable delay. In the case of a petition alleging incapacity, the professional person must be a physician or psychologist. The examination may not exceed a period of 4 hours. The professional person shall immediately notify the county attorney of ~~his~~ the findings in person or by phone and shall make a written report of ~~his~~ the examination to the court~~, with~~ and send copies to the respondent's attorney and the county attorney.

(2) The following action ~~shall~~ must be taken based on the professional person's findings:

(a) If ~~he~~ the professional person recommends dismissal, ~~he~~ the professional person shall additionally notify counsel and the respondent ~~shall~~, if detained, must be released and the petition dismissed. However, the county attorney may, upon good cause shown, request the court to order ~~an~~ no more than one additional~~, but no more than one,~~ examination by a different professional person for a period of no more than 4 hours.

(b) If ~~he~~ the professional person finds that commitment proceedings should continue, the hearing ~~shall~~ must be held as scheduled.

(3) The court may not order further evaluation pending the hearing unless sound medical reasons require additional time for a complete evaluation. ~~Such~~ The reasons ~~shall~~ must be set forth in the order, along with the amount of additional time needed."

Section 6. Section 53-21-126, MCA, is amended to read:

"53-21-126. (Temporary) Trial or hearing on petition. (1) The respondent ~~shall~~ must be present unless ~~his~~ the respondent's presence has been waived as provided in 53-21-119(2), and ~~he shall~~ the respondent must be represented by counsel at all stages of the trial. The trial ~~shall be~~ is limited to the determination of whether or not the respondent is mentally ill or seriously mentally ill or is an incapacitated person within the meaning set forth in this part.

(2) The standard of proof in ~~any~~ a hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters, except that mental disorders ~~shall~~ must be evidenced to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others ~~shall~~ must be evidenced by overt acts, sufficiently recent in time as to be material and relevant as to the respondent's present condition.

(3) The professional person appointed by the court ~~shall~~ must be present for the trial and subject to cross-examination. The trial ~~shall be~~ is governed by the Montana Rules of Civil Procedure except that, if tried by a jury, at least two-thirds of the jurors ~~must~~ shall concur on a finding that the respondent is seriously mentally ill. The written report of the professional person that indicates the professional person's diagnosis may be attached to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely because it is contained in the report. The court may order the trial closed to the public for the protection of the respondent.

(4) The professional person may testify as to the ultimate issue of whether the respondent is

mentally ill or seriously mentally ill and whether the respondent is an incapacitated person. Testimony from a professional person or others must be received on each element of the definition of mentally ill or seriously mentally ill as those terms are defined in 53-21-102 and the definition of incapacitated person as that term is defined in 72-5-101.

(5) The court, upon the showing of good cause and when it is in the best interests of the respondent, may order a change of venue. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

53-21-126. (Effective July 1, 1997) Trial or hearing on petition. (1) The respondent ~~shall~~ must be present unless ~~his~~ the respondent's presence has been waived as provided in 53-21-119(2), and ~~he shall~~ the respondent must be represented by counsel at all stages of the trial. The trial ~~shall be~~ is limited to the determination of whether or not the respondent is seriously mentally ill or is an incapacitated person within the meaning set forth in this part.

(2) The standard of proof in ~~any~~ a hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters, except that mental disorders ~~shall~~ must be evidenced to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others ~~shall~~ must be evidenced by overt acts, sufficiently recent in time as to be material and relevant as to the respondent's present condition.

(3) The professional person appointed by the court ~~shall~~ must be present for the trial and subject to cross-examination. The trial ~~shall be~~ is governed by the Montana Rules of Civil Procedure except that, if tried by a jury, at least two-thirds of the jurors ~~must~~ shall concur on a finding that the respondent is seriously mentally ill. The written report of the professional person that indicates the professional person's diagnosis may be attached to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely because it is contained in the report. The court may order the trial closed to the public for the protection of the respondent.

(4) The professional person may testify as to the ultimate issue of whether the respondent is seriously mentally ill. This testimony is insufficient unless accompanied by evidence from the professional person or others that:

(a) the respondent is suffering from a mental disorder; and

(b) the mental disorder has resulted in self-inflicted injury or injury to others or the imminent threat ~~thereof~~ of injury or has deprived the person afflicted of the ability to protect ~~his~~ the person's life or health.

(5) The professional person may testify as to the ultimate issue of whether the respondent is an

incapacitated person. This testimony is insufficient unless accompanied by evidence from the professional person or others that the respondent lacks sufficient understanding or capacity to make or communicate responsible decisions or that the mental disorder has impaired the respondent's judgment to the extent that the respondent is incapable of realizing and making a rational decision with respect to the respondent's need for treatment.

(6) The court, upon the showing of good cause and when it is in the best interests of the respondent, may order a change of venue."

Section 7. Section 53-21-127, MCA, is amended to read:

"53-21-127. (Temporary) Posttrial disposition. (1) If, upon trial, it is determined that the respondent is not mentally ill or seriously mentally ill within the meaning of this part, ~~he shall~~ the respondent must be discharged and the petition dismissed.

(2) (a) If it is determined in a proceeding on a petition under 53-21-121(1)(a)(i) that the respondent is seriously mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing ~~shall~~ must be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to a facility for a period of not more than 3 months;

(ii) order the respondent to be placed in the care and custody of ~~his~~ a relative or guardian or some other appropriate place other than an institution;

(iii) order outpatient therapy; or

(iv) make some other appropriate order for treatment.

(b) ~~No treatment~~ Treatment ordered pursuant to ~~this~~ subsection (2)(a) may ~~affect~~ not effect the respondent's custody for a period of more than 3 months.

(c) In determining which of the ~~above~~ alternatives in subsection (2)(a) to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. The court shall consider and shall describe in its order ~~what~~ the alternatives for treatment of the respondent that are available, ~~what~~ the alternatives that were investigated, and why the investigated alternatives were not ~~deemed~~ considered suitable. The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill.

(3) If it is determined in a proceeding on a petition under 53-21-121~~(1)(b)~~(1)(a)(ii) that the respondent is mentally ill within the meaning of this part, the court shall order that ~~he~~ the respondent receive treatment for a period of no more than 30 days. The court shall choose the least restrictive course of treatment reasonably available to the respondent. The court ~~must~~ shall make a separate finding, setting forth the reason ~~therefor~~ for the finding if the order includes a requirement of inpatient treatment or involuntary medication. The court may not order inpatient treatment in the ~~Montana~~ state hospital ~~at Warm Springs~~ under this subsection ~~(3)~~. The respondent may not be required to pay for court-ordered treatment unless ~~he is~~ financially able to do so.

(4) Before ordering any treatment under subsection (3) for a respondent found to be mentally ill ~~under subsection (3)~~, the court shall make findings of fact that treatment appropriate to the needs of the respondent is available. The court shall also indicate on the order the name of the facility that is to be responsible for the management and supervision of the respondent's treatment. ~~No~~ A person may not use physical force to administer medication. A court may use any legal means to enforce an order to take medication, including immediate detention not to exceed 72 hours, until the mentally ill person can be returned to the court.

(5) If it is determined in a proceeding on a petition under 53-21-121 that the respondent is an incapacitated person, the court shall appoint a treatment guardian for the duration of the period of commitment. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

53-21-127. (Effective July 1, 1997) Posttrial disposition. (1) If, upon trial, it is determined that the respondent is not seriously mentally ill within the meaning of this part, ~~he shall~~ the respondent must be discharged and the petition dismissed.

(2) (a) If it is determined that the respondent is seriously mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing ~~shall~~ must be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to a facility for a period of not more than 3 months;

(ii) order the respondent to be placed in the care and custody of ~~his~~ a relative or guardian or some other appropriate place other than an institution;

(iii) order outpatient therapy; or

(iv) make some other appropriate order for treatment.

(b) ~~No treatment~~ Treatment ordered pursuant to ~~this~~ subsection (2)(a) may ~~affect~~ not effect the respondent's custody for a period of more than 3 months.

(c) In determining which of the ~~above~~ alternatives in subsection (2)(a) to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. The court shall consider and shall describe in its order ~~what~~ the alternatives for treatment of the respondent that are available, ~~what~~ the alternatives that were investigated, and why the investigated alternatives were not ~~deemed~~ considered suitable. The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill.

(d) If it is determined in a proceeding under 53-21-121 that the respondent is an incapacitated person, the court shall appoint a treatment guardian for the duration of the commitment."

Section 8. Section 53-21-128, MCA, is amended to read:

"53-21-128. (Temporary) Petition for extension of commitment period. (1) To extend the 3-month period of detention provided for in 53-21-127(2), the procedure set forth in this subsection (1) must be followed:

(a) Not less than 2 calendar weeks prior to the end of the 3-month period, the professional person in charge of the patient at the place of detention may petition the district court in the county where the patient is detained for extension of the detention period unless otherwise ordered by the original committing court. The petition ~~shall~~ must be accompanied by a written report and evaluation of the patient's mental and physical condition. The report ~~shall~~ must describe any tests and evaluation devices ~~which~~ that have been employed in evaluating the patient, the course of treatment ~~which~~ that has been undertaken for the patient, and the future course of treatment anticipated by the professional person.

(b) Upon ~~the~~ filing of the petition, the court shall give written notice of the filing of the petition to the patient; ~~his~~ the patient's next of kin, if reasonably available; the friend of respondent appointed by the court, if any; and the patient's counsel. If any person ~~so~~ notified requests a hearing prior to the termination of the previous detention ~~authority~~ period, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the request and notify the same people, including the professional person in charge of the patient. If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months.

(c) ~~Procedure~~ The procedure on the petition for extension when a hearing has been requested ~~shall~~ must be the same in all respects as the procedure on the petition for the original 3-month commitment, except that the patient is not entitled to a trial by jury. The hearing ~~shall~~ must be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court. Court costs and witness fees, if any, ~~shall~~ must be paid by the county that paid the same costs in the initial commitment proceedings.

(d) If upon ~~the~~ hearing the court finds that the patient is not seriously mentally ill within the meaning of this part, ~~he shall~~ the patient must be discharged and the petition dismissed. If the court finds that the patient continues to suffer from serious mental illness, the court shall order commitment, custody ~~in~~ by relatives, outpatient therapy, or ~~other~~ another order for treatment as set forth in 53-21-127(2), except that ~~no~~ an order may ~~affect his~~ not effect the patient's custody for more than 6 months. In its order, the court shall describe ~~what~~ the alternatives for treatment of the patient that are available, ~~what~~ the alternatives that were investigated, and why the investigated alternatives were not ~~deemed~~ considered suitable. The court ~~shall~~ may not order continuation of an alternative ~~which~~ that does not include a comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an alternative ~~shall~~ must include a specific finding that a comprehensive, individualized plan of treatment exists.

(2) To extend the period of treatment provided for in 53-21-127(3), the procedure set forth in this subsection (2) must be followed:

(a) Not less than 7 days prior to the end of the 30-day period of treatment ordered under 53-21-127(3), the professional person in charge of the respondent's care may petition the court for extension of the treatment period. The petition must be accompanied by a written report and evaluation of the respondent's mental and physical condition. The report ~~shall~~ must describe any tests and evaluation devices ~~which~~ that have been employed in evaluating the respondent, the course of treatment ~~which~~ that has been undertaken for the respondent, and the future course of treatment anticipated by the professional person.

(b) Upon ~~the~~ filing of the petition, the court shall give written notice of the filing of the petition to the respondent; ~~his~~ the respondent's next of kin, if reasonably available; the friend of respondent appointed by the court, if any; and the respondent's counsel. If any person ~~so~~ notified requests a hearing prior to the termination of the previous detention ~~authority~~ period, the court shall immediately set a time

and place for a hearing on a date not more than 5 days from the receipt of the request and notify the same people, including the professional person in charge of the respondent. If a hearing is not requested, the court shall enter an order of treatment for a period not to exceed 30 days.

(c) ~~Procedure~~ The procedure on the petition for extension when a hearing has been requested ~~shall~~ must be the same in all respects as the procedure on the petition under 53-21-121~~(1)(b)~~ for the original treatment, except that the respondent is not entitled to a trial by jury. The hearing ~~shall~~ must be held in the district court for the county in which the treatment is being supervised unless otherwise ordered by the court. Court costs and witness fees, if any, ~~shall~~ must be paid by the county that paid the same costs in the initial proceedings.

(d) If upon ~~the~~ hearing the court finds that the respondent is not mentally ill within the meaning of this part, the petition ~~shall~~ must be dismissed. If the court finds that the respondent continues to be mentally ill, the court shall order treatment for the respondent for a period not to exceed 30 days. In its order, the court shall describe ~~what~~ the alternatives for treatment of the respondent that are available, ~~what~~ the alternatives that were investigated, and why the investigated alternatives were not considered suitable. The court may not order continuation of an alternative ~~which~~ that does not include a comprehensive, individualized plan of treatment for the respondent. A court order for the continuation of an alternative ~~shall~~ must include a specific finding that a comprehensive, individualized plan of treatment exists.

(3) Further extensions of the period of detention provided for in 53-21-127(2) may be obtained under the same procedure described in subsection (1) of this section, except that the patient's custody may not be ~~affected~~ effected for more than 1 year without a renewal of the commitment under the procedures set forth in subsection (1), including a statement of the findings required by subsection (1).

(4) The period of treatment provided for in 53-21-127(3) may be extended only once under this section. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

53-21-128. (Effective July 1, 1997) Petition for extension of commitment period. (1) (a) Not less than 2 calendar weeks prior to the end of the 3-month period of detention provided for in 53-21-127(2), the professional person in charge of the patient at the place of detention may petition the district court in the county where the patient is detained for extension of the detention period unless otherwise ordered by the original committing court. The petition ~~shall~~ must be accompanied by a written report and evaluation of the patient's mental and physical condition. The report ~~shall~~ must describe any tests and evaluation devices ~~which~~ that have been employed in evaluating the patient, the course of treatment ~~which~~ that has

been undertaken for the patient, and the future course of treatment anticipated by the professional person.

(b) Upon ~~the~~ filing of the petition, the court shall give written notice of the filing of the petition to the patient; ~~his~~ the patient's next of kin, if reasonably available; the friend of respondent appointed by the court, if any; and the patient's counsel. If ~~any~~ a person ~~so~~ notified requests a hearing prior to the termination of the previous detention authority, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the request and notify the same people, including the professional person in charge of the patient. If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months.

(c) ~~Procedure~~ The procedure on the petition for extension when a hearing has been requested ~~shall~~ must be the same in all respects as the procedure on the petition for the original 3-month commitment, except that the patient is not entitled to a trial by jury. The hearing ~~shall~~ must be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court. Court costs and witness fees, if any, ~~shall~~ must be paid by the county that paid the same costs in the initial commitment proceedings.

(d) If upon ~~the~~ hearing the court finds that the patient is not seriously mentally ill within the meaning of this part, ~~he shall~~ the patient must be discharged and the petition dismissed. If the court finds that the patient continues to suffer from serious mental illness, the court shall order commitment, custody ~~in~~ by relatives, outpatient therapy, or ~~other~~ another order for treatment as set forth in 53-21-127(2), except that ~~no~~ an order may ~~affect his~~ not effect the patient's custody for more than 6 months. In its order, the court shall describe ~~what~~ the alternatives for treatment of the patient that are available, ~~what~~ the alternatives that were investigated, and why the investigated alternatives were not ~~deemed~~ considered suitable. The court ~~shall~~ may not order continuation of an alternative ~~which~~ that does not include a comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an alternative ~~shall~~ must include a specific finding that a comprehensive, individualized plan of treatment exists.

(2) Further extensions may be obtained under the same procedure described in subsection (1), except that the patient's custody may not be ~~affected~~ effected for more than 1 year without a renewal of the commitment under the procedures set forth in subsection (1), including a statement of the findings required by subsection (1)."

NEW SECTION. **Section 9. Powers and duties of treatment guardian.** (1) The powers and duties of a treatment guardian are those specified in the order appointing the treatment guardian unless the treatment guardian has also been appointed a guardian under Title 72, chapter 5. The treatment guardian is required to report the condition of the incapacitated person as required by the court.

(2) The treatment guardian shall make a decision on behalf of the incapacitated person as to whether to accept treatment, depending on whether the treatment appears to be in the person's best interest and is the least drastic means for accomplishing the treatment objective. In making a decision, the treatment guardian shall consult with the person and consider the person's expressed opinions, if any, even if those opinions do not constitute valid consent or rejection of treatment. The treatment guardian shall give consideration to any previous decisions made by the person in similar circumstances when the person was able to make treatment decisions. The treatment guardian shall consult with the physician or other professional who is proposing treatment, the person's attorney, and interested friends or relatives of the person as the treatment guardian considers appropriate in making the decision.

Section 10. Section 41-5-523, MCA, is amended to read:

"**41-5-523. Disposition -- commitment to department -- placement and evaluation of youth -- restrictions.** (1) If a youth is found to be a delinquent youth or a youth in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department if the court determines that the youth is in need of placement in other than the youth's own home, provided that:

(i) the court shall determine whether continuation in the home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home. The court shall include a determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a state youth correctional facility. Once a youth is committed to the department for placement in a state youth

correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.

(c) order restitution by the youth or the youth's parents;

(d) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

(e) require the performance of community service;

(f) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish services that the court may designate;

(i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place a youth in a residential treatment facility.

(j) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. A youth adjudicated ~~mentally ill or~~ seriously mentally ill as defined in 53-21-102 may not be committed to a state youth correctional facility. A youth adjudicated to be ~~mentally ill or~~ seriously mentally ill after placement by the department in a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

(k) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision or adjudicated delinquent for commission of an act that would

not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

(b) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

(c) A youth may not be placed in or transferred to a penal institution or other facility used for the execution of ~~sentence~~ sentences of adults convicted of crimes.

(3) A youth placed by the department in a state youth correctional facility or other facility or program operated by the department or who signs an aftercare agreement under 52-5-126 must be supervised by the department. A youth who is placed in any other placement by the department, the youth court, or the youth court's juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by the youth probation officer includes but is not limited to:

(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) case management of the youth.

(4) The youth court may order that a youth ~~to~~ receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (5). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(5) The youth court shall determine the financial ability of the youth's parents to pay the cost of an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay all or part of the cost of the evaluation.

(6) The youth court may not order placement or evaluation of a youth ~~at~~ in a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to criminal court under 41-5-206.

(7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-206.

(8) An order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and a subsequent hearing.

(9) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of medical reports, social history material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(10) If a youth is committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(11) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209.

(12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of

immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of social and rehabilitation services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of social and rehabilitation services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

NEW SECTION. **Section 11. Codification instruction.** [Section 9] is intended to be codified as an integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part 1, apply to [section 9].

NEW SECTION. **Section 12. Effective dates.** (1) [Sections 1 through 9 and 11 and this section] are effective October 1, 1995.

(2) [Section 10] is effective July 1, 1997.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0041, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
This bill requiring a determination of incapacity in an involuntary commitment proceeding. This bill would require the appointment of a treatment guardian, enumerating the powers and duties of the treatment guardian.

ASSUMPTIONS:

1. In current law under Title 53, determination of capacity is not related to involuntary commitment, but is done (under Title 72) in a separate hearing, usually held at Montana State Hospital, where the patient is represented by the legal staff of the Board of Visitors and the petitioner (Montana State Hospital MSH) is represented by the legal staff of Department of Corrections and Human Services (DCHS). The current system allows evaluation for commitment by a mental health professional person (MSW, RN, LPC, psychologist, or physician).
2. In proposed law under HB41, the district court that commits the person will be responsible for determining competency for involuntary commitment. Evaluation will be required by a psychiatrist or psychologist.
3. Current level of filings under 53-21-121, MCA, will remain constant.
4. There will be 225 involuntary commitments per year.
5. In 60% of commitments(135), capacity to give consent is an issue. In 58% of these commitments(79), a psychologist or physician is already involved and therefore no extra cost is involved.
6. In 42% of the 135 commitments (57), without this legislation, would involve an evaluation by someone other than a psychologist or a physician.
7. It would cost $300 more per evaluation to have an evaluation done by a psychologist or a physician rather than by some other professional person.
8. In about 25% of the 135 commitments(34), where capacity is an issue, problems in finding a treatment guardian will require an extra day of hospitalization due to this proposed legislation. Psychiatric hospitalization costs $750 per day.
9. In the case of a difference of opinion, the county attorney or the respondent may request an additional evaluation by a different professional person.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
Appointment of a "treatment guardian" as defined may result in increased costs to counties. Currently, qualified persons under this section may not be readily available in some counties, requiring travel. Many counties do not have suitable mental health facilities; therefore, persons detained under Title 53 must be transported to another county, increasing time and travel costs for the "treatment guardian".

There would be an additional cost of approximately $42,600 to counties, using the following calculation:
57 commitments X $300 = $17,100
34 commitments X $750 = $25,500
(continued)

Dave Lewis 1-10-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Liz Smith 1-11-95
LIZ SMITH, PRIMARY SPONSOR DATE

LONG RANGE EFFECTS OF PROPOSED LEGISLATION:
The long-term effect may be less cost for institutional care.

TECHNICAL NOTES:
HB41 changes the word "affect" or "affected" to "effect" or "effected" in several places as noted below. The correct word is "affect" and should not be changed.
Page 13 Line 23
Page 15 Line 2
Page 16 Line 11
Page 17 Line 20
Page 18 Lines 19 and 27

REP. GRIMES asked how much time this would add to the whole process and would it require legal counsel in the mediation.

Mr. Loendorf replied that once the case is filed in court, legal counsel would be necessary. He stated that probably a month would be added to the process because the discovery and all the proceedings would be held up by this bill pending mediation.

REP. DANIEL MC GEE pursued the logic of requiring mediation as opposed to leaving it optional.

Randy Dix, Trial Lawyers Association, answered that what happens now is that the mediation is not being applied uniformly but rather depending upon which court has jurisdiction. Some county courts are requiring mediation before a case can be tried; but in Lewis & Clark County where he practices, this is not the case. The reason for imposing the affirmative obligation upon the parties to sit down in mediation is that there is no mechanism now that really does it. With respect to **REP. GRIMES'** question regarding the additional time, he gave examples which indicated that it does not add much time--a few hours to a full day at the most. He cited that the mediation does short cut the process in the later phase of litigation.

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Closing by Sponsor:

REP. WYATT closed by stating that if things go to mediation, and thereby eliminate further litigation of other cases, time is also saved in the court and for the physician and for the person who may or may not be damaged in that incident. She said that in evaluating the cost savings one must look not just at that one trial through the process of the hearing with the medical malpractice panel, plus the mediation, plus the court costs and the time involved in that. But one must look as well at the ones that may be deterred and/or stopped at this level as important in terms of saving time and getting to justice. She cited a case where a physician wanted to settle much earlier but was not given that option and the injury to both the patient and the physician through the process added to the original injury. She stated that in that case and in others like it, the current process is not in the best interests of the parties involved. She felt that this bill is a reasonable approach to the law.

CHAIRMAN CLARK then closed the hearing on HB 26.

HEARING ON HB 41

Opening Statement by Sponsor:

REP. LIZ SMITH, HD 56, DEER LODGE, opened the hearing on HB 41, which addresses the issue of treatment of the mentally ill. She represents the district where the Montana psychiatric hospital is

located as well as the Montana State Prison and stated that they feel that this particular bill would certainly streamline and benefit the mentally ill patient as well as the system. The purpose of HB 41 is to allow for the establishment of a treatment guardian, if necessary, at the time of involuntary commitment to the Montana State Hospital. Under current law, she stated, a person with mental illness who is a danger to self or others can be committed to Montana State Hospital, but the staff at Warm Springs cannot provide treatment unless the patient or the patient's guardian gives consent. Many patients who are admitted to Montana State Hospital do not have the capacity to give informed consent for treatment. She stated that in these cases, treatment must be delayed until a guardian can be appointed by a court. Establishing a guardianship after admission can delay treatment and can divert clinical staff time from treating patients to working on obtaining guardianship for patients, she said. HB 41 will allow a judge to determine the need for guardianship and appoint a guardian if necessary at the same ti that a commitment is ordered. She stated that selecting a guardian from the community prior to admission, gives a much better opportunity to find a family member or friend to serve in that capacity. It also makes it possible for state hospital staff to consult the guardian for consent to treatment immediately upon admission. She further stated that patients are committed to Montana State Hospital because they are a danger to self or others and that we have an obligation to the patient, the community and the state hospital staff to provide effective treatment as soon as possible after admission. This bill will allow treatment to be started quickly while providing an appropriate court hearing on the mental capacity of the patient and the suitability of a potential guardian.

Proponents' Testimony:

Dan Anderson, Administrator of Mental Health Division at Department of Corrections and Human Services. The purpose of HB 41 is to enable treatment of the involuntarily committed patients to Montana State Hospital as soon as possible. He felt that it was important to keep in mind that involuntarily committed patients who have been found by a court to be dangerous to self or others cannot be treated at the hospital unless the patient gives consent or the patient's guardian gives that consent. Instead, the staff goes through the process of providing the documentation to the court to obtain guardianship. The department is not seeking to have the legislature authorize them to provide treatment on an involuntary basis; rather, they are asking for a process during the commitment hearing itself to take a look at the competency of the patient and if the patient is not capable of giving informed consent, then have the guardianship established at the commitment hearing. The treatment guardianship established under HB 41 is only for the purpose of giving consent for psychiatric and other medical services during the term of the commitment. It would not occur in every case. There would still be some people involuntarily committed who

would not have guardians, it would only be established by the judge based on the testimony of mental health professionals. He said that they feel this is a moderate approach and ensures due process protection for the patient needing a guardian and allows the appointment of guardians in a timely fashion. A written statement is attached as **EXHIBIT 2**.

Carl L. Keener, MD, Medical Director, Montana State Hospital, gave testimony for HB 41. He said that as they prepare for managed care and seek accreditation for the state hospital, it becomes important that they operate as efficiently as possible. This means reducing length of stay and treating as quickly as they can. Without authority to treat means "warehousing" the patient there at a cost of $250 per day. It also means that professional staff gets involved in legal proceedings at the cost of not being free to participate as fully as they would like in treatment proceedings at the hospital. He stated that his second point is the effect of this on the patient's condition. According to his testimony, it is well established that delaying treatment of a mentally ill patient means that patient is likely to become more resistant to treatment. Many of the patients suffer while awaiting treatment. He gave examples to support this view. His third point concerned the number of assaults that occur at the hospital. He stated that although the bill will not eliminate the assaults, they think that if they can medicate patients as soon as they get to the hospital, they will reduce the number of assaults. Medication is the greatest tool they have in treating the mentally ill at the hospital and they have, in most cases, little else to offer. This will allow them to mesh their treatment programs with managed care more effectively. He further stated that the patients also need to be safeguarded from being overly medicated and an objective decision by a guardian would offer this.

Marty Onishuk, Vice President, Montana Alliance for Mentally Ill, presented testimony saying that they are very concerned about the need for treatment and support the idea of people being medicated while in the state hospital. In their point of view, mental illnesses are neuro-biological brain diseases and a malfunction of the neuro transmitters in the brain that cause people to be mentally ill. Because of these malfunctions in the brain, she stated, medication is needed. Talk therapy alone will not help one with mental illness in their view. In the past, medications were abused and used to sedate people, but there is a movement too far in the other direction, in her opinion. One thing that isn't in the bill that she thought is very important is a way of tracking medications used by people who come to the state hospital from out of state and from various parts of the state. Required tracking would help ensure proper treatment. Administration of medications is difficult. She stated that there is a portion of the bill which refers to not forcing medication. She said that was unclear to her, but she wondered if it meant a requiring injectable medications. She stated that not all medications are injectable. It would be helpful if

patients who are currently competent would sign a treatment plan in anticipation of a time when they would return to the facility and not be competent at the time of re-commitment. She said that the inclusion of a time limit in this bill is good. She asked if there are alternatives if someone goes to court and is declared incompetent and is told they should be admitted to the state hospital but the hospital is full. Another area of concern is that endangerment to self and others is self-evident, but they have seen people who are unable to care for themselves who live alone. They would like to see enforcement of that aspect of the bill which states, "unable to care for self." A final area of concern involved the fact that county commissioners must now pick up the cost for someone who is not covered by insurance while they are in one of the five psychiatric hospitals in the state.

Opponents' Testimony:

Paul Stahl, Deputy Lewis and Clark County Attorney, stated that he had committed more than 800 people to the state hospital at Warm Springs and has done over 150 guardianships. He stated that it is difficult to testify against a bill that has a good intent; but said that of the 800 people he has committed, 700 of them wouldn't have been committed had they been required to take medication. The Montana County Attorney's Association has a bill that is going to deal with the medication issue also. He stated that he was also speaking for the Montana County Attorney's Association here and that their concern is that written language in the bill does not do what is intended.

It is not discretionary to allege that someone needs to have a guardian, and he believes that it will require petitioning the court to declare incapacity in addition to mental illness. The process now is very costly to the county (at $400 a day) while looking for competent authority to testify. He told of the difficulty to get the professional testimony that is required. He said that the bill will require that, in addition to someone with a masters in social work, a second person must be found to determine incapacity. He said that upon the request of the state hospital to this county, they now make a finding in their orders that a person is incompetent to take medication. He would not argue about whether a guardian is needed to determine whether a patient would be given medication; but he stated that they make a judicial determination in all of the cases in Lewis & Clark County hearings that a person is not capable of rendering informed consent because they commit most of them in the first place because they refuse to take the medications they need to stay well. He stated his concern about the patients' rights to due process, but he felt that adding this requirement would lengthen the process by 1-2 days and increase the cost as well as get a more contentious issue in court. He did not feel this bill was very well thought out.

Kelly Moorse, Director of Mental Disabilities Board of Visitors, presented written testimony. **EXHIBIT 3**

{Tape: 1; Side: B; Approx. Counter: 34.5}

David Hemian, Public Policy Coordinator for Mental Health Association, rose not totally in opposition to the bill, but had some concerns about it along the same lines as the previous testimony. The Billings Chapter has a treatment guardianship program that is being developed. Some of the concerns regarding due process have to do with the patient terminating the guardianship relationship when the patient begins to respond to medication and regains capacity to self-determine treatment. He wants the appointment of a treatment guardian and the hearing for determination of mental illness to be separated into two different hearings. From the patient's perspective they may see the guardian in a hostile relationship because of the process. He stated that they would welcome the opportunity to work with the proponents to work out the concerns.

Patrick Pope, Executive Director, Meriweather Lewis Institute, stated that he, as well as all voting members, have a mental illness and he handles his illness through a combination of medications and therapeutic peer support. Meriweather Lewis Institute (MLI) is not opposed to the idea of guardianship. They are opposed to this bill because of its lack of concern for due process of mental health consumers. The result of the bill, in their view, is that mental health consumers are viewed as incompetent merely because they have a mental illness. The guardianship process already works, he said. The Board of Visitors does a good job in advocating for consumers while addressing the treatment concerns. He said that changing things would put additional burdens on an already strained commitment process. He cited personal experience to support this view. He believes that consumers would not benefit from the bill, but that the Department of Corrections and Human Services and state hospital employees would benefit instead. He said that often a guardian cannot be found and so the institution or the staff becomes the guardian and this presents a definite conflict of interest. He stated that the issue is not that patients do not want to take their medications, but that they are not listened to regarding side effects, etc. He urged the committee to not support this bill.

Gordon Morris, Director, Association of Counties, stated that he had studied the bill and could not find a compelling reason for the bill. He requested that this bill have a fiscal note attached as required by state law in regard to implications for court-ordered appointment of a guardian. It looks to be a county financial liability.

Informational Testimony:

None.

Questions From Committee Members and Responses:

REP. DEBBIE SHEA asked where the guardians come from in the community; how the judge determines who is a guardian.

{Tape: 2; Side: A; Comments: Tape 2 begins midway in the following testimony.}

Mr. Anderson replied that the definition in the bill of a treatment guardian could be found on page 5 which generally discusses the term "guardian." The preference would be a family member, if available. There is a better chance of that option if the selection is in the community prior to admission to the hospital.

REP. SHEA asked if anybody can apply to be a guardian.

Mr. Anderson said it would be better to discuss it regarding a particular person. There would be an attempt to identify who would be an appropriate and logical guardian for that person. It would generally be a family member, perhaps a friend, perhaps an advocate for that person from that community. They do have, at the hospital, a small volunteer guardianship program where if there isn't somebody more appropriate, these volunteers have agreed to be guardians. They plan to expand that program.

REP. ELLEN BERGMAN asked why it is that the patient reaches the state hospital without a guardian and that is not taken care of on the county level.

Mr. Anderson replied that that is what they are trying to establish with this bill. Currently, the only finding that needs to occur in court at the local level is if the person meets the criteria for an involuntary commitment. The issue of competency is not required. This bill is intended to accomplish this.

REP. DEB KOTTEL asked about subsection 16 on page 5, defining treatment guardian as "competent person." Then "suitable institution" is named; could that be Warm Springs itself?

Mr. Anderson said that it could be, to the extent that if there is no other suitable relative-friend-advocate, then it might be that the judge would designate the volunteer guardianship program at the hospital.

REP. KOTTEL said that the bill does not say "an agent of a suitable institution," but rather cites the institution itself; so would that be an officer of the institution as it is defined here, because it later says, "or....." as referring to something different. She questioned how an artificial person could be named a suitable guardian.

Mr. Anderson replied that he believed this language was taken out of existing language in the guardianship statute itself.

REP. KOTTEL asked if an institution had been appointed as guardian of a person.

Mr. Anderson said he believed it had.

REP. KOTTEL asked if this was a conflict of interest.

Mr. Anderson replied that it is absolutely a conflict of interest and he cited an example of a current situation which fits this circumstance.

REP. KOTTEL said that this statue changes the requirement for a professional person and takes them out of it, defining only a medical doctor or a psychologist. In that regard, she wanted to know what problems there had been in the past that would warrant this type of change. Secondly, she asked how many licensed psychologists there are in the state.

Mr. Anderson said he did not have an exact number but there are probably dozens of licensed psychologists in the state. The reason for including that provision has to do with the training that psychologists and psychiatrists have as opposed to the training that some other professionals have is which is much more directed at making those kinds of assessments. He said that if the issue of competency is raised, the professional person should be someone in that profession. He said there does not have to be two professional persons, only that a professional person be one of the two. Another way of doing that, if that is a major problem with the county, is to not require it, but to make sure that professional persons who are certified have the necessary background to make that assessment.

REP. KOTTEL asked if that particular part of the bill is essential to Mr. Anderson.

Mr. Anderson replied that it is not essential.

REP. GRIMES stated that the proponents described aggressive and violent behavior as one of the rationales for this bill, but the opponents described an emergency provision that could be utilized. He wanted to know if that is being utilized currently and if it provides sufficient assistance to be able to medicate those individuals who are found to be aggressive within the first 24 hours.

Dr. Keener said that they use two emergency laws now to medicate patients. If the patient is assaultive and dangerous, they can use medication under the Emergency Medication Law. Secondly they can get an emergency guardianship very quickly, but they need to clearly demonstrate that they have an emergency. The patient has to be overtly assaultive or overtly out of control. Although Kelly Moorse said that permanent guardianship could be granted within two weeks, Dr. Paul Meyer, who operates Units 42 and 43 at the state hospital, has waited an average of 132 days on 35

patients. Sometimes the patient's attorney delays hoping the patient's condition will change and guardianship will not be necessary. Emergency procedures are used only when they can be justified.

REP. MC GEE asked first about a number of changes in dates, effective dates, etc.

Mr. Anderson replied that throughout the Mental Health Act there are two versions. There is the so-called "temporary version" and there is the version that is called "the sunset version" that will go into effect in 1997 unless some changes are made. It revolves around what is called the "community commitment law" which is where someone is found to be mentally ill, but not seriously mentally ill. That part of the law is sunsetted in 1997. He said he thought that is where those dates come from. It doesn't have anything to do with this particular bill.

REP. MC GEE asked that if none of these amendments were proposed, would he be coming back to the legislature to resubmit this bill because of the sunset consideration.

Mr. Anderson replied that the sunsetting part of it does not have any bearing on this bill. In developing the bill both the sunset version and the current version have to be amended.

REP. MC GEE stated that currently there are a number of guardianship considerations and issues. He asked if it is correct that we have guardianships exist now.

Mr. Anderson said that was true.

REP. MC GEE then asked what the liability of a guardian is and what impact it has on a guardian's decision regarding a patient and medications.

Beta Lovett, Attorney, Department of Corrections and Human Services, stated that there is a provision under Title 72 which deals with the liability of guardians. She asked for time to find the exact location of that provision.

REP. LOREN SOFT addressed **Dr. Keenar** regarding his testimony that no treatment can take place barring the emergency treatment procedures that are already in place. He asked he was referring to no treatment with psychotropic medications only, or other treatment procedures as well, and would those other treatment procedures take place upon admission of the patient to the hospital.

Dr. Keener said he was referring to treatment with medication, which is their most valuable tool in treating patients though they do try to get patients to participate in other treatment, such as group therapy; however, without medication, many patients are unable to use those therapies.

REP. SOFT asked how many patients per year that are admitted to the state hospital fall into this category where you perceive that you are unable to provide psychotropic medication treatment without the guardianship.

Dr. Keener said he did not have hard figures on that but would estimate 150 patients out of 350 admissions.

REP. SOFT asked Mr. Anderson if there is another bill or law that deals with the involuntary commitment of adolescents under 18. This bill seems to leave out involuntary commitment of adolescents.

Mr. Anderson said that is right. The current commitments law as written applies both to children and adults although there is no children's facility and so there is other legislation which would eliminate children from the Mental Health Commitment Act.

CHAIRMAN CLARK asked Mr. Anderson who pays the guardian when appointed by the court.

Mr. Anderson stated that to his knowledge, guardianship is not a paid responsibility but is just assumed by somebody who wants to help the person. There is no requirement here to pay the guardian.

CHAIRMAN CLARK asked if a guardian could ask to be paid and if so, who would pay.

Mr. Anderson said he guessed that a guardian could request that but that a judge would not appoint that person unless there was somebody else there who would be able to pay.

REP. ANDERSON asked Mr. Anderson to address **Mr. Stahl's** concerns about putting additional burdens and costs on the county attorneys' offices.

Mr. Anderson said that certainly it was not the intent to add a burden by requiring that the professional person who evaluates the patient and testifies has to be a psychologist or psychiatrist. Maybe that is something the committee would not like to put on the county. He does not see this as an additional person, but rather the same person testifying on the issue of serious mental illness would also testify on capacity to give informed consent. He is not convinced that there is an additional burden except for the need as drafted to provide a psychologist or psychiatrist. He did not believe that it is necessarily the case that the time would be extended in the process.

REP. BERGMAN asked the assistant county attorney for clarification of the county's objection to having the mental health institution give medication without a guardian's consent.

Mr. Stahl said they do not object and that Warm Springs should give medication. He stated that their bill coming up later will enable people in the community to give medication without liability. He stated that they think that is absolutely necessary. His objection is that this bill passes the burden from the state hospital back to the local government. To have a guardianship, a doctor must testify and at a local level this is difficult. This puts the cost back to the local level and will cost $1,000 more per patient commitment. For his county alone, based on the numbers processed, that would add $54,000 more to the county's costs and it isn't available.

REP. **BERGMAN** stated that she was not clear on what the objection is.

Mr. Stahl does not object except that all the burden is back on the counties to do all the work and absorb all the cost. Warm Springs needs the ability to give medications and he and the County Attorneys Association supports that. However, they do not support adding the need for appointment of a guardian without the money to cover the additional cost.

REP. MC GEE asked **Mr. Stahl** to explain what a person with a Masters in Social Work (MSW) would have to do.

Mr. Stahl replied that under the statute now, either a medical doctor or someone who is certified by the Department of Institutions (educational requirements and practical experience as criteria), can make that determination. People with an MSW do the psychiatric evaluations though occasionally psychiatric nurses, clinical psychologists and sometimes a medical doctor are used for this. A professional person is often defined as someone with an MSW who can make the determination.

REP. SOFT talked about passing back the cost and asked **Mr. Stahl** who he feels is ultimately responsible for the care and treatment of chronically mentally ill people.

Mr. Stahl said it was a duty that falls upon the state because not everyone who is committed here is a resident of this county or a taxpayer or even a resident of this state.

Closing by Sponsor:

REP. SMITH said in her closing remarks that this bill definitely is a cost-shifting type of need that is putting a lot of stress on services as well as costs. Expediency and efficiency are important to the issue here. She said she felt that expanding guardianship to be more available would actually reduce the stress on county levels. People can be hospitalized at the local psychiatric hospitals while being evaluated and the cost would be picked up by that county. She thought that perhaps there could be some flexibility in regards to the crisis team make up in that the professional person need not be a psychiatrist/psychologist.

She felt there is some flexibility in the bill to allow for more efficiency to accomplish what they propose. The increase in assaultive behavior has put the employees at the state hospital at risk, which affects workers compensation rates, and a mentally ill person needs to receive consideration in becoming more in control of themselves. She felt that this is a critical need. There is a limitation on their length of stay in a psychiatric hospital and it seems to increase the number of days before treatment can begin. **Judge Mizner** is in support of this bill. There are concerns for the cost of a court-ordered evaluation; perhaps this is something the committee really needs to look at. She thanked the committee and those who testified for a good hearing.

CHAIRMAN CLARK asked **REP. SMITH** to look into a fiscal note for this bill.

CHAIRMAN CLARK closed the hearing on HB 41.

REP. BILL TASH MOVED TO ADJOURN.

{ Comments: These minutes are complete on two 90-minute tapes.}

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 1/3/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓ late	✓	
Rep. Ellen Bergman	✓ late	✓	
Rep. Bill Boharski	✓ late	✓	
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓ late	✓	
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

EXHIBIT 2
DATE 1/3/95
HB 41

Testimony on HB 41 by Dan Anderson, Administrator of the Mental Health Division, Department of Corrections and Human Services. January 3, 1995

The purpose of HB 41 is to be able to initiate treatment of involuntarily committed patients at Montana State Hospital as soon as possible after admission. The State Hospital does not have the authority to treat even an involuntarily committed person without that person's consent or the consent of a guardian.

A committed patient who lacks the capacity to give consent must wait until State hospital staff can go through the process of getting a court to appoint a guardian. This presents a waste of time and resources that could be used to provide treatment and get the patient safely back to the community.

The Department is not seeking to have the Legislature give us the authority to treat the patient without consent. We are asking only that the issue of capacity to give consent be raised at the commitment hearing and, if appropriate, a guardianship be established so that our staff at the State Hospital can consult with the guardian and begin treatment immediately.

hospital can consult with the guardian and begin treatment immediately.

The guardianship established under HB 41 is only for the purpose giving consent to psychiatric and other medical treatment and it is only for the duration of the commitment. The appointment of a guardian would not occur in every case. It would only occur when a psychologist or psychiatrist finds that the committed person lacks the ability or capacity to make responsible and informed decisions regarding medical treatment.

HB 41 is a moderate response to the problem of delayed treatment at the State Hospital due to an absence of informed consent. It maintains the patients right to have a guardian appointed only through due process while allowing that due process to occur in a timely fashion.

EXHIBIT 3
DATE 1/3/95
HB 41

OFFICE OF THE GOVERNOR
MENTAL DISABILITIES BOARD OF VISITORS

MARC RACICOT, GOVERNOR

PO BOX 200804

STATE OF MONTANA

(406) 444-3955
TOLL FREE 1-(800) 332-2272

HELENA, MONTANA 59620-0804
FAX 406-444-3543

January 3, 1995

Representative Bob Clark, Chairman
House Judiciary Committee
State Capitol
Helena, MT 59620

Representative Clark and Members of the Committee:

For the record, my name is Kelly Moorse and I am the Executive Director of the Mental Disabilities Board of Visitors. The Board, serves as an advocate for persons who are mentally disabled, reviews patient care and treatment at state institutions and mental health centers and provides legal services for the mental health consumers who are at Montana State Hospital (MSH). For over the past ten years our legal staff has represented individuals both in commitment and guardianship hearings at MSH.

As indicated by our practice, we are not in principle opposed to the guardianship issue. We are however concerned with a number of sections of this proposed legislation which do not appear to safeguard due process rights of persons with mental disabilities.

Concerns:

1. We believe in order to protect a person's due process rights, the hearings for commitment and guardianship must be separate. We have serious concern that the finding of incapacity will automatically be made with each commitment. While we know that is not the intent of the Department of Corrections and Human Services, the language on page 7, lines 26-27 and page 9, lines 1-2 appears to request commitment and incapacity. We believe the determination of guardianship must be a separate hearing (as is currently the practice for guardianship hearings held at MSH).

2. The current guardianship codes (72-5-325 MCA) offers a provision for the removal/resignation of a guardian and restoration of capacity. We urge the committee to add a similar provision within the commitment statutes.

3. It is unclear if the treatment guardian continues during recommitment. Since re-commitment can be for up to six months and/or one year, clarification of this matter is necessary.

4. While we are encouraged by the language in Section 9 for the treatment guardian to consider "the person's expressed opinions", we are concerned if the decisions extend to treatment interventions which are in direct conflict with a mental health consumers religious/spiritual beliefs (i.e. blood, authorization of ECT etc.) transfusions,

We urge your careful review of this proposed legislation. We hope you will give consideration to providing additional safeguards to insure and preserve the due process rights of persons with mental disabilities. Thank you.

Sincerely,

Kelly Moorse
Executive Director

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 01-03-95

BILL NO. 41 SPONSOR(S) REP. L. SMITH

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Paul Stahl	Lewis & Clark County		X
Gordon Morris	MACo		
Charles R. Brooks	Yellowstone County		X
David Hemion	Mental Health Assoc.		✓
Pat Pope	Representing Lewis Institute		✓
Carl L. Keener, MD.	Montana State Hospital	✓	
Terry Moorse	Board of Visitors		
Marty Onishuk	Mt. Alliance for MI	?	
Dan Anderson	Dept. Corrections; Human Service	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14

Motion/Vote: **REP. MC GEE MOVED HB 214 DO PASS AS AMENDED. The motion carried 17 - 1, REP. DIANA WYATT voted no.**

REP. BOHARSKI and **Mr. MacMaster** discussed the committee's intent in handling the two separate bills.

Motion: **REP. WYATT MOVED TO RECESS.**

The meeting was recessed at 8:00 AM.

CHAIRMAN BOB CLARK reconvened the meeting at 2:30 PM.

All members and staff were present except **REP. CLIFF TREXLER,** who was excused.

REP. LOREN SOFT described the results of the subcommittee meetings which were held on the human services bills which had come before this committee.

EXECUTIVE ACTION ON HB 60

Motion/Vote: **REP. SOFT MOVED TO TABLE HB 60. The motion carried unanimously 14 - 0. REP. CLIFF TREXLER voted by proxy. REPS. GRIMES, BOHARSKI, SMITH and AHNER were absent at the time of the vote.**

Information: **EXHIBIT 3** was submitted as further information for HB 60.

EXECUTIVE ACTION ON HB 41

Motion: **REP. MC GEE MOVED HB 41 DO PASS.**

Discussion: **REP. SOFT** talked the committee through the amendments. He also mentioned the members of the departments and advocacy groups who worked together on the amendments. He said it contained compromise language.

Motion: **REP. SOFT MOVED TO AMEND HB 41. EXHIBIT 4**

Discussion: **REP. TASH** said the language referring to involuntary administration of medication to a patient in a mental hospital was exactly the same as what he was asked to carry by the County Attorneys' Association. He asked if the amendment for subsection 2, on page 1 of the amendments was standard language.

{Tape: 1; Side: B; Comments: REP. CLIFF TREXLER voted by proxy on all bills during this meeting.}

Mr. MacMaster said these amendments amend existing code sections. He explained why the code sections were referenced through the amendments.

REP. LIZ SMITH had reviewed the amendments and it appeared to have the balance of giving authority to the medical director and through that process giving opportunity for review by an advocacy group. There were enough checks and balances to make it healthy for everyone.

Vote: **The motion carried unanimously.**

Motion: **REP. CHRIS AHNER MOVED HB 41 DO PASS AS AMENDED.**

Discussion: **REP. TASH** said his notes indicated the need for a fiscal note. The impact of the amendment on the fiscal note was discussed.

CHAIRMAN CLARK requested, without objection from the committee for **Dan Anderson, DCHS,** to address the committee on the fiscal note with the amendments.

Mr. Anderson described it as a moot issue and why.

Vote: **The motion carried unanimously.**

EXECUTIVE ACTION ON HB 93

Motion: **REP. SOFT MOVED HB 93 DO PASS.**

Discussion: **REP. SOFT** discussed the proposed amendments and a change of intent for the bill to reach consensus.

Mr. MacMaster read the proposed statement of intent. There was committee discussion on the proposal.

REP. ANDERSON said he did not like the bill. He said that the last legislature set up vacancy savings and as soon as positions became vacant the departments seemed to rush to fill them. He believed that this bill would have the effect of filling the four positions with treatment personnel. He had a problem with the bill setting up a category of people mentally competent to stand trial, but because they were severely mentally retarded (which he did not think they could be and stand trial), they would be placed at Warm Springs. He said this is becoming a society of victims and people are not being held responsible for their crimes, it is believed that everybody can be rehabilitated. The success rate of the sex offender treatment programs is marginal. He felt they would put a lot of money into treating people who had stood trial, were guilty of a crime and, in his opinion, should be sent to the state prison where a sex offender program existed.

Motion/Vote: **REP. ANDERSON MOVED TO TABLE HB 93. The motion carried 16 - 3, REPS. SMITH, KOTTEL, and SOFT voted no.**

HOUSE STANDING COMMITTEE REPORT

February 14, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 41** (first reading copy -- white) **do pass as amended.**

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, lines 5 through 9.
Following: ""AN ACT"
Strike: lines 5 through 9 in their entirety
Insert: "PROVIDING A PROCEDURE BY WHICH MEDICATION MAY BE INVOLUNTARILY ADMINISTERED TO A PATIENT AT A MENTAL HEALTH FACILITY; PROVIDING PROTECTIONS FOR THE PATIENT; PROVIDING FOR AN ANNUAL REPORT TO THE GOVERNOR; AND AMENDING SECTIONS 53-21-104 AND 53-21-127, MCA.""

2. Page 1, line 13 through page 23, line 24.
Strike: everything following the enacting clause
Insert: "Section 1. Section 53-21-104, MCA, is amended to read:
"53-21-104. Powers and duties of mental disabilities board of visitors. (1) The board is an independent board of inquiry and review to assure that the treatment of all persons either voluntarily or involuntarily admitted to a mental facility is humane and decent and meets the requirements set forth in this part.
(2) The board shall review all plans for experimental research involving persons admitted to a mental health facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United

Committee Vote:
Yes 19, No 0.

States department of health, education, and welfare. An experimental research project involving persons admitted to a mental health facility affected by this part may not be commenced unless it is approved by the mental disabilities board of visitors.

(3) The board shall at least annually inspect every mental health facility which is providing treatment and evaluation to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment areas. The board shall inquire concerning all treatment programs being implemented by the facility.

(4) The board shall annually insure that a treatment plan exists and is being implemented for each patient admitted or committed to a mental health facility under this part. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(5) The board may assist any patient at a mental health facility in resolving any grievance the patient may have concerning the patient's commitment or course of treatment in the facility.

(6) The board shall employ and be responsible for full-time legal counsel at the state hospital, whose responsibility is to act on behalf of all patients at the institution. The board shall insure that there is sufficient legal staff and facilities to insure availability to all patients and shall require that the appointed counsel periodically interview every patient and examine the patient's files and records. The board may employ additional legal counsel for representation of patients in a similar manner at any other mental health facility having inpatient capability.

(7) If the board believes that any facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any patient, it shall report its findings at once to the professional person in charge of the facility and the director of the department, and if appropriate, after waiting a reasonable time for a response from the professional person, the board may notify the next of kin or guardian of any patient involved, the friend of respondent appointed by the court for any patient involved, and the district court which has jurisdiction over the facility.

(8) The board shall report annually to the governor concerning:

(a) the status of the mental health facilities and treatment programs which it has inspected; and

(b) medications involuntarily administered to patients in mental health facilities and the effectiveness of the review procedure required by 53-21-127(2) in protecting patients from

unnecessary or excessive medication."

Section 2. Section 53-21-127, MCA, is amended to read:

"**53-21-127. (Temporary) Posttrial disposition.** (1) If, upon trial, it is determined that the respondent is not mentally ill or seriously mentally ill within the meaning of this part, ~~he shall~~ the respondent must be discharged and the petition dismissed.

(2) (a) If it is determined in a proceeding under 53-21-121(1)(a) that the respondent is seriously mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to a facility for a period of not more than 3 months;

(ii) order the respondent to be placed in the care and custody of ~~his~~ a relative or guardian or some other appropriate place other than an institution;

(iii) order outpatient therapy; or

(iv) make some other appropriate order for treatment.

(b) No treatment ordered pursuant to this subsection may affect the respondent's custody for a period of more than 3 months.

(c) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court may authorize the chief medical officer of a facility to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent and the public and to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate

written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board of visitors must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the facts upon which it found involuntary medication to be necessary.

(3) If it is determined in a proceeding under 53-21-121(1)(b) that the respondent is mentally ill within the meaning of this part, the court shall order that he receive treatment for a period of no more than 30 days. The court shall choose the least restrictive course of treatment reasonably available to the respondent. The court must make a separate finding, setting forth the reason therefor if the order include. a requirement of inpatient treatment or involuntary medication. The court may not order inpatient treatment in the Montana state hospital at Warm Springs under this subsection (3). The respondent may not be required to pay for court-ordered treatment unless he is financially able.

(4) Before ordering any treatment for a respondent found to be mentally ill under subsection (3), the court shall make findings of fact that treatment appropriate to the needs of the respondent is available. The court shall also indicate on the order the name of the facility that is to be responsible for the management and supervision of the respondent's treatment. No person may use physical force to administer medication. A court may use any legal means to enforce an order to take medication, including immediate detention not to exceed 72 hours, until the mentally ill person can be returned to the court. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

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-END-

For subcomm. not edited.

EXHIBIT 4
DATE 2/11/95
HB 41

Amendments to House Bill No. 41
First Reading Copy

Requested by House Judiciary Subcommittee on Mental Health Bills
For the Committee on the Judiciary

Prepared by John MacMaster
February 1, 1995

1. Title, lines 5 through 9.
Following: ""AN ACT"
Strike: lines 5 through 9 in their entirety
Insert: "PROVIDING A PROCEDURE BY WHICH MEDICATION MAY BE INVOLUNTARILY ADMINISTERED TO A PATIENT AT A MENTAL HEALTH FACILITY; PROVIDING PROTECTIONS FOR THE PATIENT; PROVIDING FOR AN ANNUAL REPORT TO THE GOVERNOR; AND AMENDING SECTIONS 53-21-104 AND 53-21-127, MCA.""

2. Page 1, line 13 through page 23, line 24.
Strike: everything following the enacting clause
Insert: "**Section 1.** Section 53-21-104, MCA, is amended to read:

"**53-21-104. Powers and duties of mental disabilities board of visitors.** (1) The board is an independent board of inquiry and review to assure that the treatment of all persons either voluntarily or involuntarily admitted to a mental facility is humane and decent and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research involving persons admitted to a mental health facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education, and welfare. An experimental research project involving persons admitted to a mental health facility affected by this part may not be commenced unless it is approved by the mental disabilities board of visitors.

(3) The board shall at least annually inspect every mental health facility which is providing treatment and evaluation to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment areas. The board shall inquire concerning all treatment programs being implemented by the facility.

(4) The board shall annually insure that a treatment plan exists and is being implemented for each patient admitted or committed to a mental health facility under this part. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(5) The board may assist any patient at a mental health

facility in resolving any grievance the patient may have concerning the patient's commitment or course of treatment in the facility.

(6) The board shall employ and be responsible for full-time legal counsel at the state hospital, whose responsibility is to act on behalf of all patients at the institution. The board shall insure that there is sufficient legal staff and facilities to insure availability to all patients and shall require that the appointed counsel periodically interview every patient and examine the patient's files and records. The board may employ additional legal counsel for representation of patients in a similar manner at any other mental health facility having inpatient capability.

(7) If the board believes that any facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any patient, it shall report its findings at once to the professional person in charge of the facility and the director of the department, and if appropriate, after waiting a reasonable time for a response from the professional person, the board may notify the next of kin or guardian of any patient involved, the friend of respondent appointed by the court for any patient involved, and the district court which has jurisdiction over the facility.

(8) The board shall report annually to the governor concerning:

(a) the status of the mental health facilities and treatment programs which it has inspected; and

(b) medications involuntarily administered to patients in mental health facilities and the effectiveness of the review procedure required by 53-21-127(2) in protecting patients from unnecessary or excessive medication."

{*xInternal References to 53-21-104: 53-21-166*}

Section 2. Section 53-21-127, MCA, is amended to read:

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EXHIBIT 4
DATE 2-11-95
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(c) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court may authorize the chief medical officer of a facility to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent and the public and to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration, and if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the ~~same~~ committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the facts upon which it found involuntary medication to be necessary.

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may use any legal means to enforce an order to take medication, including immediate detention not to exceed 72 hours, until the mentally ill person can be returned to the court. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

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EXHIBIT 4
DATE 2-11-95
HB 41

enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the facts upon which it found involuntary medication to be necessary."" .

{*xInternal References to 53-21-127:*

41-5-523	*53-21-102*	*53-21-128*	*53-21-128*
53-21-128	*53-21-128*	*53-21-128*	*53-21-128*
53-21-128	*53-21-128*	*53-21-135*	*53-21-181*
53-21-195	*53-21-195*	*53-21-197*	*53-21-197*
53-21-198	*53-21-198*	*53-21-198*	*53-21-412*}

The variance of judgment fees are confusing for attorneys as well as staff. She presented her written testimony, **EXHIBIT 5.**

Informational Testimony: None.

Questions From Committee Members and Responses: None.

Closing by Sponsor:

REPRESENTATIVE PAVLOVICH offered no further remarks on closing.

HEARING ON HB 41

Opening Statement by Sponsor:

REPRESENTATIVE LIZ SMITH, House District 56, Deer Lodge, presented HB 41 by the request of the Department of Corrections and Human Services. This provides for a procedure by which medication may be involuntarily administered to a patient at a mental health facility. It would also provide protections for the patient and an annual report to the governor. This would amend two areas of code. The Board of Visitors was not funded in subcommittee; therefore, she would like to work with the Department to prepare a contingency amendment which would keep in due process the oversight of use of medications by the review committee.

Proponents' Testimony:

Dan Anderson, Administrator of Mental Health Division of the Department of Corrections and Human Services, stated the purpose of HB 41 is to provide a reasonable mechanism for providing medication to seriously mentally ill persons in a mental health facility who refuse medication. It applies only to people who have been found seriously mentally ill. They would be people who a district court has determined are a danger to self or others and therefore must be hospitalized, almost always, at the state hospital. This bill would allow the district judge, in addition to ordering the person to be treated at the state hospital, to authorize the hospital to provide involuntary medication to the patient. There are a number of protections in the bill for the patient. The involuntary medication can only be ordered if it is approved by the medical director of the state hospital. A review committee, which is made of individuals that must include at least one person who is not an employee of the state hospital, would have to review the use of involuntary medication. The bill also requires that all use of involuntary medication be reported to the Mental Disabilities Board of Visitors. The Board of Visitors would issue a report annually to the governor on the use of involuntary medication and the appropriateness of the protections which are built in for the patient. The bill allows necessary treatment for a person who is a danger to self or other but refuses to cooperate with a physician. As a result,

stabilization of the illness often occurs much quicker and discharge can occur much quicker as well. While the person is in the state hospital, being on medication reduces the risk that patient has to himself, other patients and the staff. He presented written testimony, **EXHIBIT 6.**

Dr. Carl Keener, Medical Director at Montana State Hospital, stated that in the two and a half years he has been at Montana State Hospital it has been frustrating to have patients committed to the hospital for treatment and yet be in a position where they could not legally treat them. Currently, they get a guardianship on people who are committed there and refuse treatment. That may take days, weeks or months. One psychiatrist at Montana State Hospital with a personal computer tracked 35 petitions for guardianship and found the time averaged 132 days for each petition. This bill seems to take care of that problem while it still gives the individual a means of protection against any abuses of the right to give involuntary medications. Having individuals committed to the state hospital without the legal right for the hospital to treat the patient makes for an inefficient use of an expensive resource. We are constantly trying to provide better treatment and shorter lengths of stay. The ability to begin treatment immediately upon admission is necessary. This law also protects the staff from individuals who become assaultive or violent without treatment. The ability to treat immediately is also an advantage to the patient. There is increasing evidence of the value to the patient of early treatment in avoiding chronicity and permanent effects of some illnesses. He presented written testimony, **EXHIBIT 7.**

Kelly Morrison, Director of Medical Disabilities Board of Visitors, stated they review the quality of patient care and treatment at the state hospital, the center for the aged and community health centers. The Board of Visitors along with several other mental health groups worked with the Department and agreed upon the amended version of HB 41. The bill addresses the due process concerns. The current funding for the Board of Visitors is in question. She asked the committee to consider some alternative language in the event they are not funded. She presented written testimony, **EXHIBIT 8.**

David Henion, Mental Health Association of Montana, stated when this bill was heard in the House they had concerns regarding the due process which would protect patients rights. They appreciate the work of the Department and others who have come together to solve those problems. They also echo the concern regarding the funding for the Board of Visitors. If that agency is not funded, they would hope the Senate would look at it as an essential part of the process.

Gloria Hermann, Montana Psychological Association, stated they support the bill as amended.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR MIKE HALLIGAN stated he worked at the county attorney's office for five years and handled involuntary commitments. He is now in private practice and represents the families. What he sees as a potential problem is when a judge has already determined that to protect the respondent's safety as well as the public's that perhaps involuntary medication is necessary and the chief medical officer at the hospital decides whether involuntary medication is appropriate. He has not seen a case where the advocate for an individual agrees with involuntary medication. There is always a problem with the people in Deer Lodge who represent the individual. This bill states that a written notice would be prepared and given to them. There would then be testimony and evidence. A judge has already determined involuntary medication is necessary; however, there would be testimony allowed in front of the review committee which would potentially veto a judge's decision which determined it to be appropriate. Mechanically, how would this work?

Mr. Anderson stated that the district court authorizes the hospital to give medication. That is not an order that medication must be taken. That would be up to the prescription of a physician. The treating physician would recommend the medication. The medical director would then review and approve that. The final step would be the review committee which would meet prior to, or shortly thereafter, the initiation of medication. If the patient is opposed to the medication, the chances are the advocate for that patient will support the patient in that decision. There are some cases where the advocate works with the patient and helps the patient understand his need for medication. The review committee is not in a position to veto what the judge or the physician has ordered. The purpose of the review committee is to make sure that patient has the right to talk about what they are doing, make sure that issue is looked at by other staff at the state hospital as well as someone from outside the state hospital and then give input into what ultimately is the medical director's decision.

SENATOR HALLIGAN commented that judges in the Deer Lodge area have sided with consumers. He believes there could be a potential conflict with the facility stating that involuntary medication is necessary and the judge disagreeing because the client does not want it.

Mr. Anderson stated that the review talks about the testimony of the patient, the advocate, and the patient's attorney. That is testimony only before the informal review committee. The judge in Warm Springs is not involved in this process at that point. It is the district judge in the community where the person was committed who has judicial authority.

SENATOR HALLIGAN stated that only one side would be presented. They have an opportunity to present testimony and evidence. The other hearing took place in some other county. Unless that is allowed to be in the record, only one side would be presenting testimony.

Mr. Anderson stated the other side would be the staff physicians. Regardless of what the medical or judicial opinion was in the county of the individual, their physicians must take a look themselves and determine whether the person needs the medication which they are refusing. That is the balance.

SENATOR BARTLETT commented the bill contained a temporary section and a permanent section. She asked for identification of the differences between the two.

Mr. Anderson stated the temporary section included the community commitment law. Under current law, until July 1, 1997, a district judge can order a person to submit to treatment in the community. HB 41 only applies to the person found seriously mentally ill.

SENATOR BARTLETT asked why (4) is not a part of the permanent provisions.

Mr. Anderson stated that only refers to people found mentally ill, not seriously mentally ill.

SENATOR BARTLETT asked what the principle would be upon which the permanent section excludes the mentally ill determination?

Mr. Anderson stated the community commitment was established in the 80s. Since there was a lot of controversy about it, it was sunsetted. In 1989 it was reestablished. Again there was controversy, and it was again sunsetted.

SENATOR JABS asked if the patient refused medication and the doctor believed he needed it, could a judge then rule on the patient's competency if the patient is mentally alert enough to refuse it himself.

Mr. Anderson stated that was correct. At the time of commitment, the judge can order that the hospital be authorized to give medication.

SENATOR HOLDEN asked **REPRESENTATIVE SMITH** if the ACLU testified against the bill in the hearing in the House.

REPRESENTATIVE SMITH stated that she didn't believe they did. Working with the mental health advocacy groups brought forth a good balance so there was not strong opposition to this bill.

CHAIRMAN CRIPPEN asked about the funding problems?

REPRESENTATIVE SMITH stated that Section 1 has to do with the powers and duties of the mental disabilities board of visitors. Lines 28 and 29, page 3 states that the board of visitors must be fully informed of the matter within five working days after the beginning of the involuntary administration. If the board of visitors was not in place, that sentence would become obsolete. Page 5, lines 17 and 18, uses the same language. She recommended a contingency amendment that set forth a continued review of the prescribing of medications. This bill has a large amount of consumer protection and still gives the courts the ability to assign the involuntary commitment. The oversight needs to be continued through a committee which has a consumer advocate and a report to be given back to the governor.

Closing by Sponsor:

REPRESENTATIVE SMITH stated this bill includes substantial protection to ensure that involuntary medication is not used improperly. These protections include: (1) court order required, (2) a medical director must approve the order not necessarily the psychiatrist who is treating, (3) a review committee including non-hospital staff and (4) and oversight by that committee or board of visitors who must report to the governor on an annual basis.

Addition exhibit, letter from Andree Larose, Staff Attorney, Montana Advocacy Program, **EXHIBIT 9.**

{Tape: 2; Side: A}

EXECUTIVE ACTION ON HB 231

Motion/Vote: **SENATOR BISHOP MOVED HB 231 BE CONCURRED IN.** The motion **CARRIED UNANIMOUSLY** on oral vote.

EXECUTIVE ACTION ON SB 387

Discussion: **SENATOR HOLDEN** stated the bill was accepted by the subcommittee with some changes. The main issue was whether they would change the termination date on late filing claims which the legislature established in 1993. That date would have been July 1, 1996. SB 387, pages 1, 2, 3, and 4, dealt with that issue. They felt it was imperative that the system would not be changed. Those pages were deleted. Mrs. Rehberg and the Department accepted the changes. The rationale was that many users of water in the state of Montana correctly filed their water rights. They would be jeopardizing their rights if this was reopened to another system of filing water rights.

SENATOR HALLIGAN stated that they left the existing date of 96 to wait until the adjudication process was completed. He stated the next part of the bill set up an advisory committee. They changed the person appointing the committee from the chief water judge to

SENATOR BARTLETT stated without the amendment the language of the bill is unclear and there could be a court decision that this in fact is an allowable cost whether the amendment is put in or not.

Vote: The motion **FAILED** on roll call vote.

Discussion: **SENATOR HALLIGAN** asked if the committee wished to clarify by amendment that this is excluded as a cost..

CHAIRMAN CRIPPEN stated there are no exclusions in the code about allowable costs. He didn't see a need to do so.

Motion/Vote: **SENATOR HALLIGAN MOVED HB 176 BE CONCURRED IN AS AMENDED.** The motion **CARRIED** on roll call vote with **SENATORS BAER AND ESTRADA** voting **"NO".**

EXECUTIVE ACTION ON HB 41

Discussion: **REPRESENTATIVE SMITH** explained the amendments. On page 3, line 28, following visitors insert "and the director of the Department of Corrections and Human Services." They want to retain the statute of the powers and duties of the mental disability board of visitors. In case they are not able to work at their full maximum, they want to make sure that that due process is retained for the consumer. On page 5, line 17, they had the same amendment following the word "visitors" insert "and the director of the Department of Corrections and Human Services". The next amendment would follow that sentence after the words "of the involuntary administration." insert "the director shall report to the governor on an annual basis".

SENATOR HALLIGAN stated that in the past when boards have been eliminated, they simply put a codification instruction in the actual bill which eliminated the board. It then came back to any bill which passed that had that reference in it and was simply eliminated. He questioned the cleanest way to deal with the board of visitors issue.

Valencia Lane commented that since she did not know what was going on in HB 2, she was confused about advising the committee. If they are only eliminating the funding, they do not want to take out references in substantive law. References in substantive law could not be taken out of HB 2. It would be best not to take out the references in this bill.

Motion: **SENATOR HALLIGAN MOVED TO AMEND HB 41.**

Discussion: **SENATOR BARTLETT** commented that this amendment would mean that even if the funding is restored for the board of visitors, there will need to be reports not only to the board of visitors but also to the Director of the Department of Corrections and Human Services and the director as well as the

board will be required to report to the governor on specific schedules.

Vote: The motion **CARRIED UNANIMOUSLY** on oral vote.

Motion: **SENATOR HALLIGAN MOVED HB 41 BE CONCURRED IN AS AMENDED.**

Discussion: **SENATOR HALLIGAN** suggested that they look at preventing the duplication of the reports.

CHAIRMAN CRIPPEN questioned whether this would be the same report.

Mr. Anderson stated that if the two entities have to report, the two entities would get together and there would be a single report.

SENATOR JABS questioned whether this bill would help prevent abuse to the patient.

REPRESENTATIVE SMITH commented her understanding is that at the Montana State Hospital if there is a court order for involuntary placement and treatment, there needs to be guardian to approve the involuntary medication administration and sometimes that gets hung up in the process. The quicker a patient can get treatment the quicker there is a potential for a level of safety. Under this bill, there would be immediate review and a medication prescribed which has been approved by the medical director and a review committee and a report made within 5 days of what that medication will be. The patient would then be receiving treatment immediately. That is a consumer safety issue. There should not be inappropriate medication with an oversight committee. This keeps the medical profession careful in the use of medication.

Vote: The motion **CARRIED** on oral vote with **SENATORS ESTRADA** and **BAER** voting **"NO".**

EXECUTIVE ACTION ON HB 234

Discussion: **CHAIRMAN CRIPPEN** explained the amendment proposed by **REPRESENTATIVE HIBBARD.** On page 2, line 22, following the first word "credit" insert "personal". It would read "an agreement or change in the terms of the agreement relating to a letter of credit, personal line of credit, or lender". This line refers to the exceptions to the rule where the put it in writing provision does not apply. They had no intention of making it apply to personal lines of credit. Page 3, line 5, remove the words "orally and".

Motion: **SENATOR NELSON MOVED TO AMEND HB 234.**

Discussion: **SENATOR GROSFIELD** stated when a person negotiates a line of credit with a financial institution a lot of things are

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3-6-1995

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
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SENATE STANDING COMMITTEE REPORT

March 7, 1995

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration HB 41 (third reading copy -- blue), respectfully report that HB 41 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 3, line 28.
Following: "visitors"
Insert: "and the director of the department of corrections and human services"

2. Page 3, line 29.
Following: "administration."
Insert: "The director shall report to the governor on an annual basis."

3. Page 4, line 4.
Strike: "he"
Insert: "the respondent"

4. Page 5, line 17.
Following: "visitors"
Insert: "and the director of the department of corrections and human services"

5. Page 5, line 18.
Following: "administration."
Insert: "The director shall report to the governor on an annual basis."

-END-

Amd. Coord.
Sec. of Senate

Senator Halligan
Senator Carrying Bill

5311CEEC.EEE

EXHIBIT NO. 6
DATE 3/6/95
BILL NO. HB 41

HB 41 Testimony of Dan Anderson, Administrator, Mental Health Division, Department of Corrections and Human Services. 3/6/95

The purpose of House Bill 41 is to provide a reasonable mechanism for providing medication to a seriously mentally ill person in a mental health facility who refuses medication.

It applies only to persons who have been found by a district court to be seriously mentally ill ---- a danger to self or others. The bill will allow the court to authorize, as part of the commitment order, the mental health facility (usually Montana State Hospital) to involuntarily medicate a patient who refuses necessary medications. In addition to requiring a District Court order, involuntary medication would require the approval of the Medical Director and would be subject to review by a Committee which includes at least one person from outside the Hospital.

HB 41 also requires that all use of involuntary medication be reported to the Mental Disabilities Board of Visitors and that the Board of Visitors report annually to the Governor on the use of involuntary medications.

The original version of the bill would have required a guardianship process in order to involuntarily medicate. A number of people testified that that process could be cumbersome, could delay the commitment process and result in additional costs to counties. It was also not clear that the

guardianship option would provide all of the necessary oversight of this process.

HB 41, as presented today, incorporates compromise language from the Department of Corrections and Human Services and several mental health advocacy groups that met with a sub-committee of the House Judiciary Committee.

HB 41:

Allows necessary treatment to be provided to a person who is a danger to self or others but who refuses to cooperate with the physician. As a result, stabilization of the illness and discharge from the hospital can often occur sooner. While in the Hospital, the patient receives treatment which helps the person be less of a threat to himself, to other patients, and to hospital staff.

The Bill includes substantial protection to assure that involuntary medication is not used improperly. These protections include:

1. Court order required
2. Medical Director must approve order
3. Review Committee including non-hospital staff
4. Oversight by Board of Visitors who must report to Governor

HB 41 effectively balances the patient's need for treatment, the right that the patient and others have to safety, and the patient's right to be protected from unwarranted intrusion into medical decisions.

EXHIBIT NO. 7
DATE 2/6/95
BILL NO. HR 41

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE ON HOUSE BILL 41

Carl L. Keener, M.D.
Medical Director
Montana State Hospital

In the two and one-half years I have been at Montana State Hospital, first as a staff psychiatrist and, more recently as Medical Director, it has been frustrating to have patients committed to the hospital for treatment and yet be in a position where we could not legally treat. (1) This bill as currently written seems to take care of that problem, at the same time giving the individual a means of protection against any abuses of the right to give involuntary medications. Having individuals committed to the State Hospital without the legal right for the hospital to treat the patient makes for an inefficient use of an expensive resource. We are constantly trying to provide better treatment and shorter lengths of stay. The ability to begin treatment immediately upon admission is necessary in order for us to do this. This law also, by allowing medication at the time of admission, protects our staff from those individuals who become assaultive or violent without treatment. (2) I think it is essential to have such a law.

① Currently we get a guardianship which may take 10 or 2 days, weeks or months. One psychiatrist at MSH with a personal computer tracked 35 petitions for guardianship and found the time averaged 13½ days for each petition, a very costly delay.

② The ability to treat immediately is also an advantage to the patient. There is increasing evidence of the value to the patient of early treatment in avoiding chronicity and/permanent effects of some illnesses.

EXHIBIT NO. 8
DATE 3/6/95
BILL NO. HB 41

OFFICE OF THE GOVERNOR
MENTAL DISABILITIES BOARD OF VISITORS

MARC RACICOT, GOVERNOR

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STATE OF MONTANA

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March 6, 1995

Senator Bruce Crippen, Chairman
Senate Judiciary Committee
State Capitol
Helena, MT 59620

RE: HB 41

Senator Crippen and Members of the Committee:

For the record, my name is Kelly Moorse and I am the Executive Director of the Board of Visitors. The Board reviews the quality of patient care and treatment at Montana State Hospital, the Center for the Aged and the community mental health centers. I am here to testify in support of HB 41, as amended by the House.

The Board of Visitors, along with the several volunteer mental health groups, (Meriwether Lewis Institute, Mental Health Association of Montana, Montana Alliance for the Mentally Ill) worked with the Department of Corrections and Human Services and agreed upon the amended version of HB 41. The amendments address many of the due process concerns. Basically the amended version of HB 41 sets up an internal review procedure that was upheld in the U.S. Supreme Court case, Washington v. Harper 110 S. Ct. 1028 (1990).

I must advise the committee of one potential complication to this bill. This week the House Appropriations Committee is addressing House Bill 2. The General Government subcommittee deleted 5.5 FTE from the Governor's Office budget (four of those positions are with the Board of Visitors). While there is an amendment to restore our funding, I cannot predict the results of the full appropriations committee. The Senate Judiciary Committee may wish to consider alternate language in the event the Board of Visitors is not funded.

Thank you.

Sincerely,

Kelly Moorse

Kelly Moorse
Executive Director

EXHIBIT NO. 9
DATE 3/6/95
SB HB 41

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March 3, 1995

Senator Bruce Crippen, Chairperson
Senate Judiciary Committee
State Capitol
Helena, Montana 59620

Re: HB 41

Senator Crippen and Members of the Committee:

For the record, my name is Andree Larose and I am a staff attorney for the Montana Advocacy Program. Montana Advocacy Program is a non-profit organization which advocates the rights of individuals with disabilities. We are here to testify in support of HB 41, as amended by the House.

1. We worked with the Department of Corrections and Human Services and agreed upon revisions to this bill which addressed many of our constitutional concerns. The current bill before you includes those agreed upon revisions.

2. We continue to be of the opinion that a person has constitutional protection from being involuntarily medicated absent notice and hearing on the specific issue of the person's capacity, rather than just at a hearing on the commitment.

However, the bill as amended does address many of our due process concerns. Thank you for your time.

Sincerely,

Andree Larose
Staff Attorney